

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

JOHN T. OLSZYK,	:	
	:	
Plaintiff	:	CIVIL ACTION NO. 3:20-319
	:	
v.	:	(JUDGE MANNION)
	:	
JUDGE MICHAEL BARRASSE,	:	
<u>et al.</u>,	:	
	:	
Defendants	:	
	:	

ORDER

Pending before the court is the report of Magistrate Judge Karoline Mehalchick, which recommends that the plaintiff's complaint be dismissed with prejudice for failure to state a claim under Fed.R.Civ.P. 8(a) and 12(b)(6). (Doc. 10). No objections have been filed to the report and recommendation. Upon review, the report will be adopted in its entirety.

By way of relevant background, Judge Mehalchick initially screened the plaintiff's complaint pursuant to the provisions of 28 U.S.C. §§1915A 1915 and 42 U.S.C. §1997e, and determined that his complaint failed to state a claim under Rules 8 and 12(b)(6) of the Federal Rules of Civil Procedure.

(Doc. 7, Doc. 8).¹ The plaintiff was granted leave to file an amended complaint. (Id.). However, he failed to do so.

By way of the instant report, Judge Mehalchick has determined that, notwithstanding the liberal construction of *pro se* pleadings, the plaintiff's complaint fails to meet the pleading requirements of Fed.R.Civ.P. 8, in that it does not provide any meaningful opportunity for the defendants to decipher or answer the allegations against them. Moreover, Judge Mehalchick has determined that, to the extent the plaintiff alleges that he is being illegally incarcerated, he has now been released from the Lackawanna County Prison, see *n.1*, and a search of the Pennsylvania Department of Corrections (DOC) Inmate/Parolee Locator shows that he is not presently in the DOC's custody. As such, Judge Mehalchick recommends that the plaintiff's complaint be dismissed for failure to state a claim. Judge Mehalchick further recommends that any such dismissal be with prejudice as the plaintiff failed to cure the deficiencies of his complaint after having been provided a previous opportunity to do so.

¹ These documents were forwarded to the plaintiff at his last known address at the Lackawanna County Prison, but were returned with an indication that the plaintiff had been released. (Doc. 9). Contrary to the Local Rules for the Middle District of Pennsylvania, the plaintiff has not filed a change of address with the court.

Where no objection is made to a report and recommendation, the court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Fed. R. Civ. P. 72(b), advisory committee notes; see also Univac Dental Co. v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

Upon review of Judge Mehalchick’s report and recommendation, the court finds no clear error of record. Moreover, the court agrees with the sound reasoning which led Judge Mehalchick to her conclusions. As such, the court will adopt the report and recommendation in its entirety.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

(1) The report and recommendation of Judge Mehalchick **(Doc. 10)** is **ADOPTED IN ITS ENTIRETY** as the decision of the court.

(2) The plaintiff's complaint **(Doc. 1)** is **DISMISSED WITH PREJUDICE** for failure to state a claim under Fed.R.Civ.P. 8(a) and 12(b)(6).

(3) The Clerk of Court is directed to **CLOSE THIS CASE**.

S/ Malachy E. Mannion

MALACHY E. MANNION

United States District Judge

DATE: November 16, 2020

20-319-01